THE ENERGY POLICY ACT OF 2003

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 14, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

The PRESIDENT pro tempore. The majority leader.

AMENDMENT NO. 539

(Purpose: To eliminate methyl tertiary butyl ether from the United States fuel supply, to increase production and use of renewable fuel, and to increase the Nation's energy independence)

Mr. FRIST. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] for himself and Mr. DASCHLE, Mr. INHOFE, Mr. DORGAN, Mr. LUGAR, Mr. JOHNSON, Mr. GRASSLEY, Mr. HARKIN, Mr. HAGEL, Mr. DURBIN, Mr. VOINOVICH, Mr. NELSON of Nebraska, Mr. TALENT, Mr. DAYTON, Mr. COLEMAN, Mr. EDWARDS, Mr. CRAPO, Mr. CONRAD, Mr. DEWINE, and Mr. BAUCUS, proposes an amendment numbered 539.

Mr. FRIST. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. FRIST. Mr. President, I am pleased to offer this renewable fuels amendment on behalf of myself and Senator DASCHLE, as well as a number of other Senators on both sides of the aisle who have worked on this important issue for a number of years.

I think the fact that the Democratic leader and I have joined together to offer this amendment demonstrates the significance of this particular issue as well as the broad bipartisan support that this compromise package enjoys.

I do want to take this opportunity to commend all of the cosponsors of the amendment, many of whom came to the floor yesterday morning to speak, for their hard work, their dedication over the years in forging this agreement. I also note that the President has made passage of this amendment a priority, and I commend him for his commitment to getting this done.

This particular amendment will enhance America's energy independence and energy security by increasing the use of domestically produced, clean, renewable fuels. As the chairman of the Energy Committee has pointed out many, many times, America is dangerously dependent on foreign oil. We currently import 60 percent of the oil we consume, and that number is increasing. One of the major goals of this energy bill we are debating on the floor of the Senate is to reduce our dependence on foreign oil. This amendment is a critical component of that effort.

The Frist-Daschle amendment establishes a national renewable fuels standard of 5 billion gallons per year by the year 2012, nearly tripling the use of ethanol and biodiesel over the next decade. It phases out the use of MTBE over a 4-year period and authorizes funding to prevent and clean up MTBE contamination from leaking underground tanks. And it repeals the Federal oxygen content requirement for reformulated gasoline, with strong antibacksliding language to ensure that air quality is not compromised.

Mr. President, as I said, this amendment is the product of a great deal of work by many Members of the Senate over the last several years. It is a compromise that has broad, bipartisan support. It will reduce our dependence on foreign oil. It will protect the environment. It will create jobs. It will increase farm incomes. It will stimulate investment in rural communities.

I look forward to working with Senator DASCHLE and all of the other supporters of this package to get it adopted as expeditiously as possible.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The minority whip.

JUDICIAL NOMINATIONS

Mr. REID. Mr. President, I know the schedule of the majority leader is burdensome. I do wish to say a few words while he is here regarding the proposed rule change.

First of all, I have said, on a number of occasions in recent weeks, that I understand the intensity of the feeling of members of the majority—some members, not all—on the Miguel Estrada nomination and that of Priscilla Owen. But I do say, that for people to lament that the process is broken regarding judges is simply without foundation or fact. Mr. President, 124 judges have been approved for President Bush—124. Two have been held up.

The number of cloture motions that have been filed, for those of us who have served in the Senate for some time, is somewhat meaningless. The reason you continually file new cloture motions is if there is a change in the vote. And for Priscilla Owen and Miguel Estrada, there has not been a single vote change—not one. They are all the same. So filing those cloture motions is just for show; it has no basis in substance.

Now, I do say to the leader that I think this is being approached in a proper fashion. I think that to go to seek a rules change is the way it should be done. If you don't like what is going on here, try to change a rule.

I have been personally—and I am sure it has not gone without the notice of others—concerned about some of the statements made by Members of the majority saying they are going to have this rule changed regardless of what the Rules Committee does; that if it does not work out in the Rules Committee, they are going to come here and have the Presiding Officer just say what we have been doing is unconstitutional.

Now, one of the newspapers announced that this would be nuclear. I think, legislatively, nuclear is the proper term.

I have no problem—I say this to the majority leader—seeking to change the rules. If the rules are changed by a procedure we have always used here in the Senate, I will go along with that. But to have something done, that is to say suddenly that you cannot have a filibuster because it is unconstitutional, creates many different problems. Does that mean if 11 members of the Judiciary—a majority—holds up a judicial nominee, that that is unconstitutional and it can come immediately to the floor? I think not.

So I recognize—I have been as frustrated as anyone trying to get cloture motions filed and cloture determined on a vote. I can remember when I was a relatively new Member of the Senate—I was not too new then—during the Clinton administration and we were trying get grazing changed in the western part of the United States. We had four or five cloture motions filed. We got up to 57 or 58 Senators on that occasion. And we were moving, filing the cloture motions that seemed to be gaining status.

Then suddenly GEORGE MILLER from the House and HARRY REID from the Senate were called to the White House, and the President of the United States, Bill Clinton, said: We are not going to support you on this anymore. It is over with. He had made some arrangements with House Members, and our trying to get cloture invoked on something we believed was very important was, in effect, pulled out from under us. I can still remember that.

But in those, I say to the majority leader, when cloture motions were filed by Senator BYRD, we kept gaining votes. In relation to Miguel Estrada and Priscilla Owen, that is not the case.

So again, I say, that the majority leader is approaching this in the Senate way, the right way. I do say—and I know he has had conversations with the Democratic leader, and I have spoken to other Members on the other side—I hope it will be done in that fashion and not by some jury-rigged fashion to change the rules by some ''constitutional'' matter.

I even understand one of the Republican Senators is filing a lawsuit. Fine. More power to them. Let them file a lawsuit. I think that is the way it should be determined. But don't change the Senate rules in some other fashion because it would really damage our ability to move forward on legislation.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, just in closing, on my behalf, the whole purpose of submitting this resolution today is to further elevate the debate in recognition that things change in

the Senate over time. As we look back over the cherished history we all share—and it is our heritage—things today are different, and there are times for the rules to change. When you even contemplate changing the rules, you have to give a great deal of thought and debate and discussion, and that is what is underway today in submitting this resolution. I believe it is a reasonable, commonsense way of addressing an approach to addressing the issue.

I look forward to the continued debate, in referring it to the appropriate committee, where that debate can begin. And we can be commenting on the floor itself.

Again, this proposal is a bit different from the others that have been submitted in the past. It is similar in many ways in drawing upon previous legislation. It is different in the fact that it is narrow and applies to nominations; that there is this 12-hour period to give adequate time to have the debate and discussion; to start off with a threshold that is 60 votes, but over a period of 4 steps comes down to ultimately what is a majority vote of those present. The only other difference is the cloture votes would be filed sequentially. You have to dispose of one cloture vote before you go to the next, again to make sure we do not cut off adequate time to have a debate, but also to assure, at the end of the day, that the right of every Senator to express themselves in an up-or-down vote will be present.

So I am very excited about the resolution itself. Again, we are trying to do it in a very deliberate, a very focused, a very disciplined way. That is the purpose of the submission of the resolution today. I do hope it provokes discussion and debate on this floor and in committee so we can bring this, what is unprecedented in terms of partisan filibusters, to an end as it applies to judicial nominees.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I was not in the Chamber until just a few moments ago. I didn't have the luxury of hearing the distinguished majority leader. His comments have been reported to me, and I have now had the opportunity to see the text of his remarks.

I welcome the introduction of his resolution. A Senator is within his rights and certainly a majority leader is within his rights to suggest changing the rules. If we are to change rules, there is a procedure. And I respect the majority leader's interest and determination to suggest ways that the rules could be changed with regard to filibusters or, for that matter, any rule involving Senate procedure.

He joined me in opposing this proposal when it was offered by Senators HARKIN and LIEBERMAN about 10 years ago. But obviously, over the course of 10 years, we all have a right and an expectation that we will change our points of view from time to time. He has on this matter.

As in most parts of this country, slogans and phrases sometimes have more wisdom than one might see on the surface. There is an old slogan or saying in South Dakota that I am sure is repeated in other States: ''If it ain't broke, don't fix it.'' It ain't broke.

Anytime you can confirm 124 judicial nominees in the course of 2½ years, I don't see much broken. That is a 98.4-percent confirmation rate. Any baseball player standing at home plate would settle for 500 percent, 400 percent, 300 percent. Any quarterback would love to have a 98-percent rate of completion on passes. I don't know of another administration that has enjoyed the success in confirmations of its judges that this administration has: 124 to 2; that is the score; 124 circuit judges, district judges; 124 nominees who have worked their way through hearings, through a committee vote in the Judiciary Committee, and on to the floor in 2½ years; 124 to 2.

Those two, Miguel Estrada and Priscilla Owen, have unique circumstances. In the case of Mr. Estrada, it is a matter of asking him with all deference to fill out the application form for the job.

I have many employees. I am fortunate to have such good ones. But nobody would work in our office if they refused to fill out pages 3 and 4 and 5 of a 5-page application. If they said: I will fill out the first two pages but not the last three, I would say: Find another job. You are not going to work here.

That is really what Mr. Estrada is saying to us. In spite of the fact that Mr. Bork, Mr. Rehnquist, Mr. Civiletti, and so many other nominees who have had similar circumstances have provided the very information we are asking of Mr. Estrada, Mr. Estrada and his supporters in the administration are saying: No, we will not comply. We will not fill out the job application.

Our response is: Fill out the job application and you will get a vote. It is that simple. In the case of Ms. Owen, we have a record that is very disconcerting, a record of putting her own views ahead of the law. We cannot accept that either. If she would comply with the law and interpret the law, it would be one thing; but to ignore the law and to use her own views as she applies her decisionmaking authority is not something that is acceptable as well. So you have those two nominees.

I know some of my colleagues have lamented this notion that filibusters could be employed, but we had a filibuster in the 106th Congress of a man of incredible stature and standing, Richard Paez. He was a nominee to be U.S. Circuit Judge in the Ninth Circuit during the 106th Congress. This was a filibuster. I find it interesting that the majority leader was one of those who voted against cloture. He apparently felt at the time that cloture was inappropriate, or he would not have voted against it. In other words, he voted to extend the filibuster during that debate on Mr. Paez.

But Senator FRIST certainly is not alone. There were 14 people who voted to continue debate on Mr. Paez. Senator HATCH, as recently as 1994, said the filibuster is—using his words—''one of the few tools that the minority has to protect itself and those the minority represents.'' Senator HATCH made the statement during a filibuster to a Clinton nominee to the Third Circuit. In 1997, 3 years later, Senator HATCH stated:

> Determining which of President Clinton's nominees will become activists is complicated and it will require the Senate to be more diligent and extensive in its questioning. . . .

Senator Smith of New Hampshire—no longer with us in the Senate—also came to the floor to argue forcefully in support of filibustering judicial nominees. His quote:

> So I do not want to hear that I am going down some trail the Senate has not gone down before by talking about these judges and delaying. It is simply not true. Don't pontificate on the floor and tell me somehow I am violating the Constitution . . . by blocking a judge or filibustering a judge that I don't think deserves to be on the court. That is my responsibility. That is my advise and consent role, and I intend to exercise it.

So, first, on the basis of the record, 124 to 2, and second, on the basis of past precedent, both with regard to Republican positions relating to these judges, as well as to the advocacy of the filibuster in prior years, makes me question: Why now, with that record, would anybody be concerned about the rights of the minority, the rules of the Senate, or the longstanding practice every Senator has been the beneficiary of with regard to using the rules of the Senate to advance his or her arguments?

Mr. President, I guess I will simply reiterate the admonition many South Dakotans oftentimes use: If it ain't broke, don't fix it. Mr. President, it ain't broke.

The Federalist Papers are those papers we turn to with some frequency as we attempt to interpret the intentions of our Founding Fathers as they considered the institutions of the Senate and the House, our democracy. Federalist 63 says:

> The people can never willfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

Well, the key word in Federalist 63 is the word ''dissimilar.'' We are not the House of Representatives. We are the body where deliberative, extensive, unlimited debate is protected. That is the essence of the Senate. I sometimes don't know that we live up to the moniker ''the greatest deliberative body in the world.'' Sometimes I don't think we are particularly deliberative. But we are rooted in the traditions of unlimited debate. That has been the essence of this body for well over 200 years.

I hope we never minimize the importance of our distinctions, our dissimilarities with the House, the intentions of the Founding Fathers when it comes to the protections, traditions, and the usefulness of the rules of the Senate, just as they applied over 200 years ago. That, in essence, is what is at stake.

As I said at the beginning, the majority leader is certainly within his right to propose rules changes. That has happened by leaders and Senators on both sides of the aisle for hundreds of years. We will always examine ways with which to make the Senate work more functionally and perhaps more efficiently. I don't want to give up the tradition of the very essence and meaning of the body for the sake of efficiency, for the sake of moving things along because, indeed, that was not the intent or the expectation of our Founding Fathers.

Let me finish by restating the score: 124 to 2. It ain't broke.

THE ENERGY POLICY ACT OF 2003—Continued

Mr. DASCHLE. Mr. President, I know the majority leader also came before the Senate this morning to do what I expected he would do yesterday. He has laid down the first amendment in the energy debate. I want to again commend him for his leadership and involvement with regard to the ethanol amendment. The ethanol amendment enjoys broad bipartisan support. That was evidenced, of course, yesterday as people on both sides of the aisle came to the floor and spoke eloquently and with conviction about the importance of this legislation. It is important, in part, because of our dependency upon foreign sources of oil.

We use too much imported oil. The more we can become self-sufficient and independent, the more we can truly not only help our own economy, but create environments within which questions pertaining to our dependence will not become key issues as we resolve whatever diplomatic or international challenges our country may face.

Energy independence is a laudable goal and it is within our grasp. But the only way it can be achieved is with the creation of renewable fuels, the creation of fuels that can be discovered, utilized, and created in this country. There is no better example of that than ethanol. Ethanol reliance means energy independence.

Secondly, the environmental issues are clearly at stake as we consider the consequences of ethanol. Clean air benefits cannot be understated. In 2002 alone—just last year—ethanol use in the United States reduced greenhouse gas emissions by 4.3 million tons, which is the equivalent of removing more than 636,000 vehicles from the road. That is a remarkable achievement. That was in 1 year. If you can imagine taking 636,000 vehicles off the road in 1 year, and the effect it would have on greenhouse gases if we could do that, that is in essence what we were able to create with this increased reliance on ethanol—not to mention our opportunity to phase out methyl tertiary butyl ether, MTBE, contamination.

MTBE contamination was also used as an oxygenate to improve environmental circumstances when the oxygen standard was passed in the early 1990s. We only found later how contaminating and toxic it can be. So phasing out MTBE is also a part of our legislative approach, and that, too, will have dramatic positive environmental consequences.

We talk about the economic consequences of ethanol and that, too, can hardly be overstated. One in three rows of corn in South Dakota today is being used to produce ethanol. The ethanol industry is creating $1 billion in additional economic impact in my State alone. It means higher corn prices. It means prices will increase, according to USDA estimates, 50 cents a bushel, about $1.3 billion in additional farm income annually once this legislation is enacted.

The University of South Dakota has stated this proposal has the potential to create 10,000 new jobs in our State, bringing in more than $600 million annually to the State economy and over 214,000 jobs nationally once the RFS is implemented.

From an economic point of view, in addition to the environmental and energy independence advantages, we also have, of course, an agricultural advantage: more income for farmers with less reliance on farm programs.

There is a lot to be said for this legislation. I am very pleased, after all these years, as lonely as it was when we started, to see this kind of broad-based support. I would estimate now more than two-thirds, maybe three-fourths, of the Senate would support this legislation. We are well on our way to establishing what I view to be an appreciation of the importance, the contribution, the impact that ethanol can have in energy, in the economy, in agriculture, and in foreign policy.

That is why I feel as strongly as I do about the amendment, and that is why I am pleased to be a cosponsor with Senator FRIST and many of our colleagues, including the distinguished Senator from South Dakota, Mr. JOHNSON, on this amendment.

I hope the Senate will act quickly. Let us adopt this amendment. Let us ensure, whether it is part of the energy bill or a freestanding bill that was reported out of the Environment and Public Works Committee, that we will have the opportunity to enact this legislation into law sometime this year. We should not wait any longer. It should happen this year. It can happen this year. With the broad bipartisan support, it will happen this year.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I ask unanimous consent to be added as a cosponsor to the renewable fuels standard amendment just offered by Senator DASCHLE and Senator FRIST.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSON. Mr. President, I rise today in very strong support of the bipartisan renewable fuels standard amendment and to encourage my colleagues to support this critically important provision when it comes to a vote.

Last year, Senator HAGEL, my Republican colleague from Nebraska, and I worked on a renewable fuels standard for ethanol and biodiesel during consideration of the Senate energy bill. We were successful in securing inclusion of a renewable fuels standard in the Senate energy bill. We were successful on the Senate floor, but as we got to conference with the House of Representatives, the entire energy bill wound up not being passed and the whole collection of provisions collapsed in the end. But we were successful in the Senate Energy Committee last year, we were successful on the Senate floor, and I am very optimistic this year that we not only will pass a renewable fuels standard in the Senate once again but that with newfound interest in the RFS in the House of Representatives, I am confident this will ultimately make it to the President's desk and become law this year.

Regrettably, time ran out on us last year during the 107th Congress, and yet two-thirds of the Senate voted in favor of a renewable fuels standard and against amendments that would have weakened or eliminated it.

Today, ethanol and biodiesel comprise less than 1 percent of all transportation fuel consumed in the United States. Out of 134 billion gallons of fuel consumed in the U.S., renewable ethanol and biodiesel made from soybeans comprise less than 3 billion gallons—3 billion out of 134 billion gallons consumed.

Our amendment, identical to language passed in the Environment and Public Works Committee, would require that 5 billion gallons of transportation fuel be comprised of renewable fuel by the year 2012.

The consensus was agreed to last year after productive negotiations between the renewable fuels industry, agriculture groups, the oil industry, and environmentalists.

Rural States such as South Dakota can make enormous contributions to